

## COMMERCIAL DISPUTES WEEKLY – ISSUE 133

27 SEPTEMBER 2022 • ARTICLE



### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

**"...I must guard against rewriting the parties' contract and if the Defendant entered into an agreement which had that effect then so be it."**

**Solutions 4 Tyneside Limited v Galliford Try Building 2014 Limited**

#### Contract Interpretation

In a dispute arising out of a PFI project to rebuild or refurbish local authority sheltered housing, the Technology and Construction Court has concluded that life expectancy obligations applied only to the newbuilds, not the refurbished properties. The court took a cautious approach as the parties sought declarations, rather than decisions on particular issues. Deciding in the abstract runs the risk of the court expressing the contract in different words and potentially making a contract which is different from that agreed between the parties. The court concluded that for the life expectancy obligations to apply to the refurbished properties would be an unusual arrangement, this was not what the parties had agreed and if that had been the intention, one would have expected it to have been set out in clear terms.

**Solutions 4 Tyneside Limited v Galliford Try Building 2014 Limited [2022] EWHC 2372**

(TCC), 21 September 2022

#### Summary Judgment

The Commercial Court has refused to grant summary judgment in a claim which involved the determination of a novel point under section 26(3) of the Financial Services and Markets Act 2000. The court noted that it is not normally appropriate to use powers of summary determination on assumed facts in an area of developing jurisprudence and decisions as to novel points of law should be based on actual findings of fact. Further, investigations at trial of certain activities the claimant undertook may assist with and have an impact on the court's assessment of whether the claimants were carrying out any of the regulated activities, and it was not possible to say that the defendants had no real prospect of proving their case at trial. In addition, summary determination would not have avoided the trial in any event as there would still have been a trial of other defences.

**S&B Consultancy Services Limited v Bourn and Banks [2022] EWHC 2359 (Comm)**, 20 September 2022

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## Witness Statements

A claimant has been penalised with indemnity costs for breaches of the requirements for witness statements in Practice Direction 57AC. The claimant refused to engage early on with the defendant's concerns but then subsequently acknowledged that the statement did not comply in several significant respects and served an amended statement. Whilst concerned to avoid satellite litigation, the judge dealt with the issues at the pre-trial review rather than at trial given that the trial timetable was already tight. The non-compliant statement included extensive commentary on other evidence not contemporaneously available to the witness. It also contained narrative commentary on documents, extensive submissions and criticism of the defendant's disclosure. In addition, a list of the documents referred to or reviewed by the witness was not included.

McKinney Plant & Safety Ltd v Construction Industry Training Board [2022] EWHC 2361 (Ch), 20 September 2022

## Contract Interpretation

The liquidator of a property development company ("ALD") has been granted a declaration as to the meaning of a settlement agreement entered into with various defendants. ALD marketed and sold apartment leases on an off-plan basis. The liquidator brought a claim against 13 defendants alleging that ALD's director had dishonestly diverted monies from ALD to other companies which he controlled and had registered sham charges over ALD's assets. Nine of the defendants entered into the settlement agreement with the liquidator and the court confirmed that the terms of the agreement obliged another company ("ALDOP") to transfer to ALD the full legal and beneficial ownership of a leasehold property which it had marketed (clause 6.3). The liquidator's right to order the transfer was not fettered by the time limit in clause 11.1 as that only applied to the liquidator's discrete right under clause 6.2 of the settlement.

Absolute Living Developments (in liquidation) v DS7 Ltd and others [2022] EWHC 2351 (Ch), 16 September 2022

Should you wish to discuss any of these cases in further detail, please speak with a member of our London dispute resolution team below, or your regular contact at Watson Farley & Williams:

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